

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Timothy Corley

**Date application filed with the Town Clerk:** April 24, 2009

**Nature of request:** Request Special Permit to replace existing rear porch roof, replace and expand existing rear second floor deck and add a new second floor deck over existing first floor space on the front of the building, on a non-conforming dwelling with no changes to the footprint, under Section 9.22 of the Zoning Bylaw, at 95 East Pleasant Street (Map 11C, Parcel 261, R-G Zoning District).

**Address:** 95 East Pleasant Street, Unit H (Map 11C, Block 8, Parcel 261, R-G Zone).

**Legal notice:** Published on May 6 and May 13, 2009 in the Daily Hampshire Gazette and sent to abutters on May 6, 2009.

**Board members:** Barbara Ford, Albert Woodhull, Tom Ehrgood

**Submissions:**

- One (1) copy of the Memorandum, ZBA FY2009-00035, dated May 15, 2009, prepared by staff;
- One (1) copy of the ZBA application, filed with the Town Clerk on April 24, 2009;
- One (1) copy of a site plan “sketch”, prepared by the applicant;
- One (1) copy of a railing section;
- One (1) copy of a porch and deck profile;
- One (1) color photograph of the rear façade indicating proposed improvements;
- One (1) color photograph of the front façade indicating proposed improvements;
- One (1) copy of ZBA FY1983-65 to convert a single family dwelling to a two family dwelling, submitted by staff;
- One (1) copy of ZBA FY 1983-66 to create eight dwelling units with references to the converted two family dwelling, submitted by staff;
- One (1) copy of ZBA FY1986-7 to create eight townhouse units (including the two family dwelling), submitted by staff;
- One (1) copy of site photographs, dated May, 2009, prepared by staff;
- One (1) copy of a Town GIS map showing location of property, prepared by staff;
- One (1) copy of a Town GIS map showing the approximate area of first floor improvements, submitted by staff;
- One (1) copy of a Town GIS map showing the approximate area of second floor improvements, submitted by staff.

**Site Visit:** May 18, 2009

Barbara Ford, Albert Woodhull and Tom Ehrgood met with Timothy Corley on the site. The Board observed the following:

- A three (3) story, two-family dwelling, located at the western edge the property in close proximity to East Pleasant Street;
- An area of evergreen vegetation between the front of the dwelling and East Pleasant Street;
- The location of additional condominium units comprising Tanbrook Condominiums;
- The front of the existing building containing a one story enclosed area and the roof above where a new second floor deck is proposed;
- The location of two second floor windows. The northerly window is proposed to be converted to a door;
- The rear of the dwelling and the location of the porch roof to be removed and reconstructed and the area of expanded second floor deck.
- The existing steel spiral staircase providing access to the second floor deck;
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**Public Hearing:** May 20, 2009

Timothy Corley presented the application. For the public hearing, Mr. Corley provided the Board with two (2) new photographs: one (1) photograph of the front of the building and one (1) photograph of the rear of the building. The photographs were stamped received by the Planning Department on May 20, 2009.

Mr. Corley stated that he is proposing the following improvements to the rear of the two-family dwelling:

- A. To remove and replace the existing roof over the first floor porch. The roof is in poor condition due to rot. The roof replacement would include replacing the roof structure, including the supporting materials and roof shingles. The new roof will not be expanded and will be constructed of materials compatible with the existing building.
- B. To remove, replace and expand the existing second floor deck ~~is~~ located on top of the porch roof. The new deck will be expanded to the east [toward the Tanbrook condominiums] by approximately one (1) foot and will not extend past the existing first floor roof line. The deck will also be expanded to the south by approximately four (4) or five (5) feet. The deck will extend to and not beyond the edge of the quoins [*a solid exterior angle (as of a building); one of the members (as a block) forming a quoin and usually differentiated from the adjoining walls by material, texture, color, size, or projection*] on the south side of the rear façade of the building. The replacement and expansion of this deck does not increase any non-conformity of the existing building.

The new deck will be constructed of materials that are compatible with the existing building. Specifically, the deck railings will be constructed of white composite material and the deck floor will be grey composite material, in accordance with the “railing section” submitted with the application. The north end of the new deck, which is accessed by a steel spiral staircase, will not be expanded.

Mr. Corley stated that he is proposing the following improvements to the front of the two-family dwelling:

- C. To create a new second floor deck above the existing first floor enclosed space. The new deck will be approximately eight (8) feet wide and approximately 25 feet in length. The new deck will extend to and not beyond the edge of the quoins located at the north and south end of the building façade. The new deck will not extend past the existing roof line of the first floor. The new deck area does not increase any non-conformity of the existing building.

The new deck at the front of the dwelling will be constructed of materials that are compatible with the existing building. Specifically, the deck railings will be constructed of white composite material and the deck floor will be grey composite material, in accordance with the "railing section" submitted with the application.

The proposal for the new deck area includes the conversion of the northern most second floor window with a door to provide access from inside the dwelling. The door will consist of a wooden frame with a glass panel or panels and will be compatible in design with the existing dwelling.

Mr. Woodhull stated that based upon the site visit and the information submitted, he is satisfied that the proposed improvements will not increase the non-conformity of the building.

Ms. Ford asked the applicant whether he intends to prepare more detailed plans, such as a site plan with dimensions or elevations of the areas of improvements.

Mr. Corley stated that his contractor provided him with the plans that were submitted to the Board. He added that he submitted a series of photographs with the application to show the areas of new and expanded deck. He stated that because the improvements are not increasing the non-conformity of the building, he did not think a formal site plan was necessary.

Mr. Ehrgood asked the applicant whether additional plans would be necessary in order to get a building permit for construction. Mr. Corley responded that he wasn't sure if more plans would be needed for construction. He stated that he was instructed to obtain approval from the Zoning Board of Appeals prior to applying for a building permit.

Mr. Bagg stated that additional plans and/or information may be required for a building permit. He added that the Building Inspections Department is responsible for ensuring that the construction meets all applicable standards and Code requirements. He stated that the Board is charged with deciding whether or not to allow the alteration of the non-conforming building and that the Board could decide to require the applicant to prepare detailed conditions that establish clear limits, parameters and design requirements for the improvements, in lieu of requiring the applicant to provide additional plans. The Building Inspections Department would then be able to utilize the Special Permit conditions to determine whether the design is in accordance with the intent of the Board's decision.

Mr. Ehrgood stated that he feels the Board could establish conditions which clearly identify what is being proposed and the limits of the improvements based upon the information submitted.

Mr. Ehrgood MOVED to close the evidentiary portion of the public hearing and Mr. Woodhull seconded. The Board VOTED unanimously to close the public hearing.

**Public Meeting:**

During the public meeting, the Board drafted conditions and findings that would be appropriate if the Special Permit were to be approved.

The Board members concluded that the new deck areas, at the front and rear, shall extend only up to the edge of the quoins, as to not obstruct the quoins. The Board members agreed to mark up the submitted photographs to illustrate the area of the quoins and denote that the decking shall extend, up to, and not past the quoins.

The Board members agreed that the areas of new improvement shall be compatible in design, color and material with the existing dwelling and that none of the improvements increase the non-conformity of the building.

The Board members concluded that the alterations do not change the principal use of the two-family dwelling and determined that if Special Permit were granted for the modification, the Permit should be separate and distinct from the previous Special Permit, ZBA FY1987-6, which established the use of the building as a two-family dwelling and the additional condominium units at the rear of the property.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses. The proposed replacement and expansion of the existing deck at the rear of the dwelling is small enough that it will ~~as to~~ not negatively affect the existing uses on the property and in the neighborhood. The new deck at the front of the dwelling is compatible with the neighborhood because the new deck area is screened from East Pleasant Street by a significant area of evergreen vegetation and is not readily visible from the southerly adjacent property. The permit requires that the improvements be designed and constructed with materials that are in keeping with the color and architecture of the existing building and do not require the expansion of the building footprint.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. The permit allows for the reconstruction of an existing porch roof with no changes in its size or function. The permit allows for the replacement and minor expansion of the existing deck area at the rear of the building. The area of expansion is along the south side of the building and is not in close proximity to the adjacent residential property. The new second floor deck at the front of the building is screened from East Pleasant Street and the northerly adjacent residential property by a significant area of evergreen vegetation. The improvements are consistent with the surrounding residential neighborhood and do not require the alteration of the existing footprint.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The rear porch and deck will maintain the current means of providing pedestrian access. The existing spiral staircase up to the second floor deck will remain in its current location and continue to provide a second means of egress from the second floor. The new deck area at the front of the building will be accessed from the interior of the second floor unit by a new door to be located in place of an existing window. The new deck area will not have any other access points.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting. The permit requires that any new outdoor lighting fixtures associated with the deck areas be downcast to minimize glare and light spill over onto adjacent properties.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. The new deck area and expansion of an existing deck, are consistent with structures and uses typically found in a residential neighborhood. The permit requires that the improvements be designed and constructed with materials that are in keeping with the color and architecture of the existing building.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. In accordance with the requirements of the Section 9.22 of the Zoning Bylaw, the permit allows the alteration of a non-conforming structure that does not substantial alter the character of the site or the neighborhood. The permit requires that the improvements be designed and constructed to be compatible with the architecture of the existing two-family dwelling. The Board finds that the improvements will not be substantially more detrimental to the neighborhood than the existing non-conforming building.

**Public Meeting – Zoning Board Decision**

Mr. Woodhull made a motion to APPROVE the permit, with conditions. Ms. Ford seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2009-00035, for the reconstruction of a first floor porch roof, enlargement of an existing second story deck and for the creation of a new second floor deck on a non-conforming, owner occupied two-family dwelling under Section 9.22 of the Zoning Bylaw, as requested in the application submitted by Timothy Corley, at 95 East Pleasant Street, Unit H (Map 11C, Block 8, Parcel 261, R-G Zoning District), with conditions:

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BARBARA FORD

\_\_\_\_\_  
ALBERT WOODHULL

\_\_\_\_\_  
TOM EHRCOOD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2009.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2009  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2009,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants Special Permit, ZBA FY2009-00035, for the reconstruction of a first floor porch roof, enlargement of an existing second story deck and for the creation of a new second floor deck on a non-conforming, owner occupied two-family dwelling under Section 9.22 of the Zoning Bylaw, as requested in the application submitted by Timothy Corley, at 95 East Pleasant Street, Unit H (Map 11C, Block 8, Parcel 261, R-G Zoning District), with the following conditions:

1. All new construction shall be compatible in color, material and design with the existing exterior of the building;
2. All replacement construction and new decking shall be designed such that no aspect of the building is made more non-conforming to the required setbacks;
3. All new exterior lighting fixtures associated with the use of the deck areas shall be downcast to minimize glare and light spill over onto adjacent properties;
4. All improvements shall be designed and constructed in accordance with all applicable state and local Building Code and other requirements.

The new second floor deck on the front (west) façade shall:

5. Extend up to and not beyond the edge of the quoin features (as to not obstruct) on the south and north corners of the building, as amended and shown on the photograph approved by the Zoning Board of Appeals dated May 20, 2009;
6. Extend to the existing edge of the first floor roof (as to not extend over);
7. Be accessed from the dwelling by a wood frame door with one or more glass inserts in the location of the northerly second floor window, as noted and shown on the photograph approved by the Zoning Board of Appeals dated May 20, 2009;
8. Consist of white railings and the floor shall consist of grey composite materials in accordance with the Railing Section drawing approved by the Zoning Board of Appeals dated May 20, 2009.

Improvements to the rear (east) façade shall be as follows:

9. The porch roof replacement shall be constructed such that there are no changes to the size or extent of the roofline;
10. The expanded second floor deck shall not extend outward past the edge of the existing roof along its eastern edge (facing Tanbrook Condominiums);
11. The expanded second floor deck shall extend up and not beyond to the edge of the quoin features at the south corner of the building, as noted and shown on the photograph approved by the Zoning Board of Appeals dated May 20, 2009.
12. The railings shall be constructed of white composite materials and the floor shall be constructed of grey composite materials as identified on the Railing Section approved by the Zoning Board of Appeals dated May 20, 2009.

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BARBARA FORD, Acting Chair  
Amherst Zoning Board of Appeals

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DATE